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CITY OF OAKLAND and DEANNA  
SANTANA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DARYELLE LAWANNA PRESTON,

Plaintiff,

v.

CITY OF OAKLAND; DEANNA  
SANTANA, in her individual capacity; and  
DOES 1 through 10, inclusive,

Defendant.

Case No. 14-cv-02022 NC

**CITY OF OAKLAND AND DEANNA  
SANTANA'S ADMINISTRATIVE  
MOTION AND MEMORANDUM OF  
POINTS AND AUTHORITIES TO FILE  
CERTAIN DOCUMENTS UNDER SEAL**

[Declaration of David A. Lucero and  
[Proposed] Order Filed Concurrently  
Herewith]

{400085973 }

CASE NO. 14-cv-02022 NC

CITY OF OAKLAND AND DEANNA SANTANA'S  
ADMINISTRATIVE MOTION AND MEMORANDUM OF POINTS  
AND AUTHORITIES TO FILE CERTAIN DOCUMENTS UNDER  
SEAL

**NOTICE OF MOTION AND MOTION**

Pursuant to Local Rules 7-11 and 79-5, Defendants City of Oakland and Deanna Santana (collectively "Defendants") hereby bring this administrative motion (the "Motion") for an order permitting Defendants to file under seal Exhibits B through K to the Supplemental Declaration of David A. Lucero in Support of Defendant's Motion For Leave To File Motion For Reconsideration ("Lucero Declaration"). Good cause exists to grant Defendants' Motion because these documents are attorney-client privileged and/or contain confidential third party information. Since there is little question about the privileged or confidential nature of the documents at issue here, Defendants assert that these documents should be filed under seal when submitted to the Court in furtherance of their now-pending Motion For Leave to File Motion For Reconsideration.

This motion is supported by the attached Declaration of David A. Lucero in Support of Defendants' Motion ("Lucero Declaration").

DATED: April 17, 2015

Respectfully submitted,  
CITY OF OAKLAND

/s/ Otis McGee, Jr.

Barbara J. Parker  
Otis McGee, Jr.  
Maria Bee  
James F. Hodgkins  
Attorneys for Defendants

DATED: April 17, 2015

Respectfully submitted,  
MEYERS, NAVE, RIBACK, SILVER & WILSON

/s/ Geoffrey Spellberg

Camille Hamilton Pating  
Geoffrey Spellberg  
Attorneys for Defendants

DATED: April 17, 2015

Respectfully submitted,  
VILLARREAL HUTNER PC

/s/ Ross Boughton

Ross Boughton  
David Lucero  
Attorneys for Defendants

**I. MEMORANDUM OF POINTS AND AUTHORITIES**

**A. Plaintiff Continues To Possess Documents Belonging To The City That She Failed To Return Upon Termination.**

Daryelle Lawanna Preston ("Plaintiff") is the former Director of Employee Relations for the City of Oakland ("the City").<sup>1</sup> As discussed in more detail in Defendants' Motion To Disqualify Plaintiff's Attorneys And For Return Of Documents ("Motion to Disqualify") and Defendants' Motion For Leave To File Motion For Reconsideration ("Motion for Reconsideration"), Plaintiff admits that, upon her termination, she removed and failed to return City documents she acquired by virtue of her employment with the City.

Since the City became aware that Plaintiff had removed City documents using at least one City-issued thumb drive, Defendants repeatedly requested that Plaintiff identify the scope and nature of the documents that she continues to wrongfully possess. Plaintiff refused these requests and Defendants were forced to file the Motion to Disqualify.<sup>2</sup> On February 11, 2015, the District Court issued an order denying Defendants' Motion to Disqualify in its entirety. On March 13, 2015, Defendants filed a Motion For Reconsideration. The Motion for Reconsideration is fully briefed and is currently pending before this Court.

**B. March 30, 2015: Plaintiff Produces A Copy Of Some Of The City Documents, Substantiating Defendants' Concerns That Plaintiff Continues To Possess Highly Privileged And Confidential City Documents.**

On March 30, 2015, Plaintiff served Defendants with a discovery response stating she would produce a copy of *some* of the documents she downloaded onto one of her City-issued thumb drives, but she limited her production to documents she deemed "work related."<sup>3</sup>

<sup>1</sup> The City and individual defendant Deanna Santana are collectively referred to as "Defendants."

<sup>2</sup> Contemporaneous to Defendants' filing their Motion to Disqualify, Defendants also filed an Administrative Motion To File Certain Documents Under Seal. This Court granted Defendants' Administrative Motion on February 11, 2015. The good cause justifying Defendants' initial Administrative Motion was based on the same set of facts and privacy concerns that form the basis for Defendants' instant Administrative Motion.

<sup>3</sup> This production does not satisfy the relief Defendants seek through their Motion for

As discussed in more detail in the accompanying Declaration of David Lucero, the production contained numerous privileged and/or confidential documents, substantiating the concerns raised by Defendants in their Motion for Reconsideration and Defendants believe the Court should have access to this newly-discovered information when ruling on their Motion. The examples Defendants wish to present to this Court for review in connection with their Motion are:

- One email exchange discussing a City **employee's suicidal ideations** and steps taken to address concerns for the employee's health, identifying the employee by name (Lucero Decl., Exhibit B);
- One email exchange and related attachments containing City **employees' social security numbers** (Id. at Exhibit C);
- Two email exchanges discussing City **employees' need for medical accommodation**, identifying the employees by name (Id. at Exhibit D);
- Excel spreadsheet listing several hundreds of **City employees by name**, position and employee ID number, and stating information regarding their wages (Id. at Exhibit E);
- Two email exchanges and their respective attachments reflecting investigations performed by Oakland Policy Department and Oakland Fire Department discussing **threats of violence by one City employee against another**, identifying the employees involved by name (Lucero Decl., Exhibit F);
- Three **Closed Session Reports** and a **budget report** marked "Privileged and Confidential" (Id. at Exhibit G);
- Two **privileged legal memoranda** drafted by the City's internal and external counsel regarding various regulations affecting City employees, expressly indicating that the memoranda are privileged (Id. at Exhibit H);
- Six privileged Emails from **City Attorney Barbara Parker** regarding a variety of legal and personnel matters (Id. at Exhibit I);
- Five email exchanges discussing **internal complaints** or concerns about City employees, identifying the target employees and witnesses by name (Id. at Exhibit J);
- Two **investigation reports of alleged misconduct**, identifying the target employees and witnesses by name (Id. at Exhibit K);

Reconsideration because: (i) Plaintiff remains in possession of City documents because she only produced a copy of some of the documents; (ii) Defendants are left to trust Plaintiff to determine what documents are "work related"; (iii) Defendants are left to trust that Plaintiff did not transfer, delete or tamper with any of the documents on the thumb drive; and (iv) Plaintiff has not made clear if the thumb drive was the only method by which she took City documents.

1 The redacted copies of these documents will be attached as Exhibits B through K of the  
 2 Lucero Declaration in support of Defendants' Motion for Reconsideration. By this administrative  
 3 request, Defendants seek to seal Lucero Exhibits B through K. Full, un-redacted copies of the  
 4 documents are being submitted to the Court in camera.

## 5 **II. GOOD CAUSE EXISTS TO GRANT DEFENDANTS' MOTION**

6 A party seeking to file documents under seal must articulate a specific factual basis  
 7 supported by the appropriate factors to overcome the public's "general right to inspect and copy  
 8 public records and documents, including judicial records and documents." Kamkana v. City and  
 9 County of Honolulu, 447 F. 3d 1 172, 1 178 (9th Cir. 2006). "Good cause" is generally required  
 10 when the information to be sealed is attached to a non-dispositive motion." See AmerGen Energy  
 11 Company, LLC v. U.S., 115 Fed. Cl. 132, 137-38 (2014).

12 Good cause exists to grant Defendants' Motion. The materials sought to be sealed are  
 13 attorney-client privileged and/or confidential communications that Defendants are seeking to have  
 14 returned and not used (further) by Plaintiff or her attorneys. The attorney-client communications  
 15 (Exhs. G-I) are privileged and should not be publicly available. Courts have held that filing  
 16 privileged documents under seal is the appropriate method of presenting such documents to the  
 17 court. See Curto v. Medical World Communications, Inc., 2011 WL 1793259 (E.D.N.Y. May 11,  
 18 2011). Defendants will be greatly prejudiced if these communications containing Defendants' legal  
 19 analysis were available in the public record. Such a result, in fact, would be defeat the purpose of  
 20 this Motion, which is to protect against and remedy the wrongful disclosure of privileged  
 21 documents. Exhibits G, H and I fall squarely within that privilege.<sup>4</sup> It is clear that each of these  
 22 documents are not, and never will be, public records. Gov. Code, § 6254, subd. (k).

23 With regard to the remaining documents (Exhs. B-F, J, K), the documents are, by their very  
 24 nature, confidential and the sole purpose for providing them to this Court is to provide examples of  
 25 \_\_\_\_\_

26 <sup>4</sup> Exhibits G and H are marked as "Privileged" on the face of the documents, and Exhibit I is  
 27 comprised of communications to or from City Attorney Barbara Parker regarding legal opinions.

1 the materials Plaintiff took and the importance of obtaining their return. *See Phillips v. General*  
 2 *Motors, Corp.*, 307 F. 3d 1206, 1211 (9th Cir. 2002) (holding that FRCP Rule 26(c) authorizes the  
 3 district court to issue "any order which justice requires to protect a party or person from annoyance,  
 4 embarrassment, oppression or undue burden"). All of the documents contain confidential  
 5 information regarding third parties that should be protected and not disclosed to the public.

6 Although these documents are privileged and/or confidential, they must be provided to the  
 7 Court under seal for the Court to evaluate the documents and rule on Defendants' Motion for  
 8 Reconsideration. However, Defendants are not waiving the privilege. Accordingly, even though  
 9 the documents have been filed, good cause exists for the Court to grant this Administrative Motion.

### 10 **III. RELIEF REQUESTED**

11 Defendants therefore respectfully request an order from the Court allowing Defendants to  
 12 file under seal Exhibits B through K to the Lucero Declaration.

13 DATED: April 17, 2015

Respectfully submitted,  
 CITY OF OAKLAND

14  
 15 /s/ Otis McGee, Jr.

Barbara J. Parker  
 Otis McGee, Jr.  
 Maria Bee  
 James F. Hodgkins  
 Attorneys for Defendants

16  
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 19 DATED: April 17, 2015

Respectfully submitted,  
 MEYERS, NAVE, RIBACK, SILVER & WILSON

20  
 21 /s/ Geoffrey Spellberg

Camille Hamilton Pating  
 Geoffrey Spellberg  
 Attorneys for Defendants

22  
 23 DATED: April 17, 2015

Respectfully submitted,  
 VILLARREAL HUTNER PC

24  
 25 /s/ Ross Boughton

Ross Boughton  
 David Lucero  
 Attorneys for Defendants